IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 473 OF 2005

Devasthan Panch Committee, Peth, Dist. Nashik. ... Appellant

V/s

Ramdas Dattatraya Chaudhari & anr. ... Respondents

Mr. M.M. Sathaye for the appellant.

Mr. P.N. Joshi for the respondent Nos. 1 & 2.

CORAM: P.V. KAKADE, J.

DATED: 17TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Nashik, dated 28.7.2003 dismissing the appeal and confirming the judgment and order passed by the Joint Civil Judge, Jr.Divn., Nashik, dated 6.1.1997 and dismissing the suit of the plaintiff.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff Trust filed the suit for possession of the suit property with arrears of rent. The suit property consists of 20 ft. x 13 ft. open land and a super structure on it at township of Tal. Peth, Dist. Nashik.

The plaintiff filed the suit against the defendants on the ground that they have not been paid rent of the property and hence the suit came to be filed for possession of the property.

Defendants contested the suit on various grounds inter-alia contending that they have not committed any breach of agreement by non-payment of rent amount and, as such, the suit was sought to be dismissed.

4. The Trial Judge adjudicated the dispute on merits and came to the conclusion that the defendants had not committed breach of agreement by non-payment of rent and also had not committed breach of an agreement by encroaching upon 20 ft x 13 ft. the adjoining land and by raising a permanent structure over it. The suit notice was held good in law by the Trial Court and it was held that the plaintiff was entitled to rent

deposited by the defendants in the Court and, as such, the suit for possession came to be dismissed.

5. The appeal was carried to the District Court, Nashik. The learned Addl. District Judge, Nashik, after hearing both parties, came to the conclusion that the suit in its present form was not maintainable in law and findings recorded by the Trial Court came to be confirmed and appeal was dismissed. Hence the present appeal.

6. It is to be noted that there is absolutely no substantial question of law involved in this appeal. The only question of law observed by the lower appellate Court and urged before me is, whether all the trustees of the Trust must join the suit to prosecute the cause in Civil Court. In this regard, the lower appellate Court has put reliance on two rulings of this Court in the case of **Kamruddin Mesjit Trust v/s Abdul Rahiman Fakiruddin, reported in 345 Bom.R.C. 1986.** This Court has taken view that, in law, all the trustees must join in the action, all co-trustees must in general, act in concurrence and jointly. It is a joint office that they hold. They constitute in the eyes of law but one collective trustee. One or some only of the trustees

cannot sue for possession unless and except where the instrument of Trust expressly so authorises and provides. Another ruling is in the case of **Nagar Wachan Mandir v/s M/s. Akbaralli Abdulhusein & Sons, reported in 1994 (2) B.C.R., 251,** wherein it was observed that unless instrument of Trust otherwise provides all co-trustees must join for filing a suit to recover possession of the property from tenant and suit filed by two trustees held not maintainable.

7. In my considered view, the ratio laid down in both the rulings will hold good and, therefore, there is no doubt whatsoever that when all the trustees were not party to the present proceeding, the lower Court has rightly dismissed the suit on the ground that it was not maintainable in law. Hence, I do not propose to interfere with this finding as it is legal and proper and hence find no merit.

In the result, the appeal deserves to be dismissed and stands dismissed with no order as to costs.

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